

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KENNETH JAMES MULKEY,

Defendant-Appellant.

UNPUBLISHED

December 30, 1997

No. 196496

Jackson Circuit Court

LC No. 96-075133 FC

Before: Griffin, P.J., and Markman and Whitbeck, JJ.

MEMORANDUM.

Defendant was convicted of two counts of armed robbery, MCL 750.529; MSA 28.797, and two counts of possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). He received two concurrent terms of imprisonment of five to twenty years on the armed robbery convictions to be served consecutively with and subsequently to two concurrent terms of imprisonment of two years on the felony-firearm convictions. Defendant appeals as of right. We affirm. We decide this appeal without oral argument pursuant to MCR 7.214(E).

Defendant asserts that his confession was involuntarily made because, although he was advised of his rights pursuant to *Miranda v Arizona*, 384 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966), by an Albion public safety officer at the time he was taken into custody, he was not again advised of his *Miranda* rights when questioned by a Jackson County sheriff's deputy approximately thirty minutes after being placed in custody.

The police are not required to advise a criminal defendant of his rights pursuant to *Miranda* every time the defendant is questioned. *People v Littlejohn*, 197 Mich App 220, 223; 495 NW2d 171 (1992); *People v Godboldo*, 158 Mich App 603, 605-607; 405 NW2d 114 (1986). Accordingly, the failure to advise defendant of his *Miranda* rights a second time, in and of itself, does not render his confession inadmissible as evidence against him. *Godboldo, supra*, 607. Instead, the only question is whether, viewing the totality of the circumstances, defendant's confession was voluntary. *Godboldo, supra* at 606.

Defendant's confession was voluntarily given in light of the totality of the circumstances. *People v Cipriano*, 431 Mich 315, 334; 429 NW2d 781 (1988); *People v Burrell*, 417 Mich 439, 448-449; 339 NW2d 403 (1983); *People v Haywood*, 209 Mich App 217, 225-226; 530 NW2d 497 (1995); *People v Hicks*, 185 Mich App 107, 113; 460 NW2d 569 (1990).

Defendant also argues that his confession to the police, as well as certain pieces of physical evidence recovered as a result of defendant's confession, should be suppressed because the police lacked probable cause to arrest defendant and, therefore, the confession and physical evidence constitute fruit of an illegal arrest. Defendant failed to move in the trial court to suppress this evidence on the ground now asserted. Absent a motion to suppress and an initial determination of this question by the trial court, this Court may not properly review defendant's claimed error. *People v Carroll*, 396 Mich 408, 411-412; 240 NW2d 722 (1976).

For the same reason, we decline to address defendant's claim that the gun should have been suppressed because, by the sheriff's deputy's expression of concern over what might happen if a child discovered the discarded weapon, the deputy unfairly played on defendant's emotions to convince defendant to take the deputy to the discarded weapon. *Carroll, supra*.

Affirmed.

/s/ Richard Allen Griffin

/s/ Stephen J. Markman

/s/ William C. Whitbeck